United States Postal Service *and* New London, Connecticut Area Local No. 646, American Postal Workers Union, AFL–CIO *and* Stamford, Connecticut Area Local, American Postal Workers Union, AFL–CIO *and* Local 147, American Postal Workers Union, AFL–CIO *and* American Postal Workers Union, AFL–CIO, Intervenor. Cases 34–CA–4423(P), 34–CA–4510(P), 34–CA–4615(P), and 34–CA–4731(P)

March 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On October 25, 1990, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel filed limited exceptions and a supporting brief, the Charging Parties and Intervenor filed exceptions and a supporting brief,[1] and the Respondent filed cross-exceptions and brief in support and replies to both the Charging Parties' and Intervenor's exceptions and to the General Counsel's limited exceptions. The Charging Parties and Intervenor also filed a reply to the Respondent's exceptions. The Charging Parties thereafter filed five separate notices of recent authority.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt his recommended Order.

In each of these consolidated cases the Respondent, United States Postal Service, is alleged to have violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information requested by the Charging Party-Unions, three locals of the American Postal Workers Union, AFL–CIO. The judge found that the Respondent violated the Act: (1) in Case 34–CA–4510 by refusing to supply Charging Party-Stamford Local[3] with information it requested regarding former unit employee Bryan Ewell; (2) in Case 34–CA–4615, by delaying nearly 5 months in providing the Stamford Local with the names and various supporting information and documentation it requested concerning the restricted sick leave status of its own unit employees; and, (3) in the same case, by refusing to provide the Stamford Local with the names and various supporting information and documentation concerning the restricted sick leave status of employees represented in other bargaining units. The judge dismissed all other allegations.

We agree with the judge's recommended disposition of the issues raised in the consolidated complaint.[4] In adopting his recommendation that we dismiss the allegations in Case 34–CA–4731, however, we believe it would be useful to explain our reasons for doing so by reference to another decision, recently issued,[5] in which the Board found a violation on the basis of a Section 8(a)(5) refusal-to-supply-information allegation similar to the one we are dismissing here.

A. *Factual Findings*

On January 30, 1990, Arlene Vanasse, an employee of the Respondent and represented by the APWU through one of its local affiliates, Local 147 (the Union), received a notice of removal for failure to report to work as scheduled. The notice cited five in-

[1] The Charging Parties and Intervenor reiterate within their exceptions a motion, denied by the administrative law judge, to reopen the record to introduce additional evidence in Case 34–CA–4615. We have considered this motion and the documents submitted in support and agree with the judge's ruling.

[2] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] The Respondent excepts to the judge's finding that it violated the Act by failing to provide information requested by Charging Party-Stamford Local on the basis, inter alia, that it is the Intervenor, the American Postal Workers Union, AFL–CIO (APWU), and not the Stamford Local, that is the recognized representative of the employees and party to the collective-bargaining agreement. The Respondent thus contends that it is obligated to provide the information only to the APWU, and not to the Local. We agree with the judge's rejection of this argument. While the APWU is party to the contract, art. 31 of that contract states that requests for information concerning local matters are to be submitted by local union representatives. In addition, the evidence discloses that the parties' practice included the exchange of information on the local level and that the Respondent never asserted lack of standing by any of the Locals here involved at the time it refused to provide the information at issue. Moreover, it is within the discretion of the APWU, as exclusive representative, to designate and authorize agents to act in its behalf. The APWU has not disavowed these Locals' efforts to obtain the disputed information, but rather, by intervening in this proceeding and supporting the Charging Parties' positions, has clearly endorsed the authority of the Locals to engage in these representational functions.

[4] In adopting the judge's recommended dismissal of allegations in Case 34–CA–4510 relating to the Union's request for copies of Investigative Memoranda (IMs) and disciplinary actions regarding supervisors, we do so on the basis that the credited evidence establishes that no IMs existed and no disciplinary actions were taken against supervisors for drug-related activities. The grievance from which the Union's request was derived concerned the termination of a unit employee for drug-related crimes. In order to establish a nexus of relevance between the Union's pursuit of that employee's grievance and its need for information regarding supervisors, it would be necessary to show that there were supervisors about whom IMs and/or disciplinary records existed for conduct similar to that for which the unit employee was disciplined, i.e., drug-related activities. Because there were no such similarly situated supervisors and, thus, none of the requested records existed, it was not unlawful for the Respondent to withhold supervisory IMs and disciplinary records based on other conduct from the Union. Cf. *Postal Service*, 301 NLRB 709 fn. 2 (1991).

[5] *Postal Service*, 310 NLRB 391 (1993).

stances of tardiness and five instances of unexcused day-long absences during the period October 21, 1989, through January 27, 1990.[6] It also referred to five disciplinary warnings or suspensions for similar conduct from May 1987 through August 1989.

The Union filed a class action grievance, dated February 12, 1990, on behalf of Vanasse and all APWU members. The grievance alleged disparate treatment by the imposition of stricter attendance and disciplinary standards on unit employees as compared to supervisors. In conjunction with the grievance, Joseph Morris, the Union's steward at the mail facility at Bradley International Airport in Connecticut, made two requests for certain information about 19 of the Respondent's supervisors working either at the airport facility or at a facility in downtown Hartford. The requests were for the supervisors' leave records (Form 3792) and records of any disciplinary actions that might have been taken against them for leave abuse or other attendance problems. (The requests were for all such records during the time period September 1, 1988, through February 2, 1990.) The Respondent denied the requests.

In making the first request (for the records of 12 named supervisors), Morris told the Respondent's representative, William Edgar, that the Union believed that the Respondent had to supply such information because of the recent court enforcement of a Board order against the Respondent in an information-request case,[7] and that the Union ''felt'' that there were supervisors ''who were not regular in attendance.'' Morris also reminded Edgar that all of the Respondent's employees, supervisors as well as bargaining unit employees, were subject to time and attendance requirements set out in sec. 666 of the Respondent's Employees and Labor Relations Manual (known as ELM). In making the second request (for the records of an additional seven supervisors), Morris told Edgar the new names were the result of ''an appeal made at a union meeting for the names of additional supervisors that had had prolonged absences.''

B. *Discussion*

The critical question here is whether the judge was correct in finding that the information requested by the Union was not relevant to its role in processing the grievance resulting from Vanasse's removal notice.[8] The judge noted that the information about supervisors was not presumptively relevant because it concerned individuals outside the bargaining unit. Thus, the burden was on the Union (and, in the unfair labor practice hearing, on the General Counsel) to demonstrate relevance.[9] As we have held in *Postal Service*, 888 F.2d 1568, supra, information about disciplinary actions (or the lack thereof) taken against supervisors for particular conduct may be relevant to a grievance about discipline against unit employees for the same conduct, where it is shown that both groups are subject to the same prohibitions or requirements. The union might use such information to make a disparate treatment argument to an arbitrator in support of a claim that the discipline of a unit employee was too harsh. As the judge here correctly observed, however, the burden of demonstrating relevance is not carried by a showing of a common disciplinary standard and a ''mere suspicion'' that there may exist some evidence of supervisory misconduct similar to that involved in the grievance.[10]

Whether a union has gone beyond ''mere suspicion'' to show relevance is a factual question to be decided on a case-by-case basis. Relevance was established in *Postal Service*, 888 F.2d 1568, supra, because it was undisputed not only that supervisors and unit employees were all subject to the same gambling prohibitions, but also that they had engaged together in precisely the same misconduct. Similarly, in *Postal Service*, supra, the Board found that a union which was grieving two unit employees' discipline for attendance irregularities, including tardiness, had cited sufficient specific information to establish the relevance of requests for the leave records of two named supervisors. The union had identified several individuals (including the union steward) who had personally witnessed instances of supervisors reporting in late on specified days within a time period comparable to that in which the unit employees' alleged irregularities had occurred. While there may have been some extenuating circumstance to excuse the supervisors' tardiness, this information was sufficiently indicative of probable rel-

[6] Specifically the notice referred to 11 days on which she was absent without excuse and 5 days on which she was late to work without excuse.

[7] Morris was referring to *NLRB v. Postal Service*, 888 F.2d 1568 (11th Cir. 1989), enfg. 289 NLRB 942 (1988), in which the union sought information about possible disciplinary action against supervisors who were found guilty of engaging in worksite gambling with bargaining unit members. The information was sought in support of grievances over discipline of the unit members involved in the gambling.

[8] The judge described ''two reasons'' for recommending dismissal of the 8(a)(5) allegation—(1) that there was no ''nexus between the discipline of Vanasse and the possible discipline of supervisors'' and (2) that the Union had proferred no basis beyond ''mere suspicion'' concerning possible leave abuses by supervisors and thus had not sustained its burden of proving the probable relevance of the requested information. We disavow any suggestion that there are separate issues of ''nexus'' and ''relevance.''

[9] *Sheraton Hartford Hotel*, 289 NLRB 463 (1988); *Pfizer, Inc.*, 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985).

[10] *Sheraton Hartford Hotel*, supra, 289 NLRB at 464; *Southern Nevada Builders Assn.*, 274 NLRB 350 (1985).

evance to a disparate treatment argument that the Board deemed the Union entitled to the information.[11]

By contrast, here the Union advised the Respondent of nothing more than that, at a union meeting, employees had furnished supervisors' names in response to an appeal for the names of those who had had ''prolonged absences.'' In elaborating, at the hearing in this case, on the Union's basis for requesting the information, Union Steward Morris testified merely that ''it's reported that they [the supervisors] miss a lot of time'' and that stewards at the downtown Hartford facility had produced names in response to a request concerning those supervisors ''that they felt may border on being abusers of time and attendance . . . .'' These kinds of vague, general reports, not linked to a specific time period and dependent largely on unnamed witnesses' subjective judgments about what might ''border'' on leave abuse, amount to nothing more than a showing that people were suspicious that supervisors might have engaged in misconduct similar to that for which a unit employee was being disciplined. It falls short of a showing of relevance.

Accordingly, we adopt the judge's recommendation that the Respondent did not violate Section 8(a)(5) and (1) of the Act by declining to provide the requested records of the 19 supervisors.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United States Postal Service, New London, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[11] Our standard does not, therefore, require the Union to prove actual disparate discipline in order to obtain information bearing on such a claim.

Thomas R. Gibbons, Esq. and *John S. F. Gross, Esq.*, for the General Counsel.
Andrew L. Freeman, Esq., Francis Bartholf, Esq., and *Nancy James, Esq.*, for the Respondent.
Susan L. Catler, Esq., for the Charging Parties.

DECISION

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on March 19 and July 9, 1990, in Hartford, Connecticut. The charge in Case 34–CA–443(P) was filed on August 29, 1989,[1] by New London, Connecticut Area Local 646, American Postal Workers Union, AFL–CIO (Local 646). The charges in Cases 34–CA–9510(P) and 34–CA–4615(P) were filed on November 15 and February 7, 1990, by Stamford, Connecticut Area Local, American Postal Workers Union, AFL–CIO (Stamford Local). The charge in Case 34–CA–34–CA–4731(P) was filed on May 11, 1990, by Local 147, American Postal Workers Union, AFL–CIO (Local 147). The complaint in Case 34–CA–4423(P) is used on October 13; the complaint in Case 34–CA–4510(P) issued on December 28, as did an order consolidating it with Case 34–CA–4423(P). The complaint in Case 34–CA–4615(P) issued on March 29, 1990, and the complaint in Case 34–CA–4731(P) issued on May 24, 1990. The first three of these cases were consolidated by an order consolidating cases issued by me on April 5, 1990; Case 34–CA–4731(P) was consolidated with the other cases by an order consolidating cases issued on June 22, 1990. Each of the complaints alleges that the respective union-charging parties requested certain information from the United States Postal Service (Respondent), which information was relevant and necessary to it as the representative of certain of Respondent's employees, and that Respondent failed and refused to provide the unions with this information, in violation of Section 8(a)(1) and (5) of the Act. For the sake of simplicity, after some introductory matter, each case will be discussed separately. On the entire record, including my observation of the witnesses and the briefs received, I make the following[2]

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that the Board has jurisdiction over Respondent by virtue of Section 1209 of the PRA.

II. LABOR ORGANIZATION STATUS

Respondent admits that the American Postal Workers Union, AFL–CIO (APWU) is a labor organization within the meaning of Section 2(5) of the Act. The consolidated complaint also alleges that Local 646, Local 147, and the Stamford Local are each labor organizations within the meaning of the Act; this Respondent denies. Although this issue was not fully litigated, the evidence establishes that each of these unions files grievances with Respondent regarding action that Respondent has taken against its members, represents these members in their grievances while they are still at the local level, requests information from Respondent when it feels that it needs information in order to properly represent these employees and, in the past, has received this information from Respondent. The evidence also establishes that APWU has no representative in the area on a regular basis. I therefor find that Local 646, Stamford Local, and Local 147 are each labor organizations within the meaning of Section 2(5) of the Act.

[1] Unless otherwise indicated, all dates referred to herein are for the year 1989.

[2] General Counsel's motion to strike attachments to Respondent's brief dated August 28, 1990, is granted. As set forth by General Counsel in his motion, the attachments to Respondent's brief were never received into evidence and are therefor not a part of the record herein. Additionally, what is entitled ''Motion of the Charging Parties and the Intervenor to Reopen the Record'' is actually a posthearing attempt to have certain evidence, not adduced at the hearing, considered by me. This ''motion'' is denied and the information contained therein, and in the accompanying affidavit, will not be considered.

III. THE UNIONS' AUTHORITY

Counsel for Respondent, in his brief, argues that the Stamford Local ''lacks standing'' to raise the claims involved in this matter. Counsel for Respondent correctly points out that the contract is between Respondent and APWU and that the powers given by this contract to the local unions are extremely limited. However I do not believe that this contract was meant to exclude the APWU local unions from requesting information from Respondent (in fact, the record establishes that this has been the practice between the parties), or from instituting actions before the Board for the failure to provide such information. It appears that although the contract gives only very limited authority to the local unions, because the APWU does not regularly have its representatives in most areas where Respondent's facilities are located, it is the local unions that perform the functions of administering the contract on a day-to-day basis. For example, article 31 of the contract provides: ''Requests for information relating to purely local matters should be submitted by the local union representative to the installation head or his designee.'' Additionally, the two complaints referred to by counsel for Respondent in this defense, state that the information requested is necessary for, and relevant to, the local *and APWU's* performance as the representative of these employees. I therefor reject Respondent's defense that the Stamford Local lacks standing to raise these claims.

IV. CASE 34–CA–4423(P)

John Longo is the chief steward for Local 646; on August 11 he sent to Respondent a request for information containing three items. The first was for ''All 397s[3] for all EAS[4] New London personnel, current year.'' The remaining requests were for information regarding bargaining unit employees represented by Local 646. On August 14 Respondent provided the information on the latter two requests, but refused to provide the information requested about the EAS employees: ''This info is not available as EAS employees are nonbargaining employees.'' On August 15 Longo wrote to Donald Hargy, the New London postmaster, stating that he had not received all the information he requested on August 11, stating: ''I intend to compare bargaining and non-bargaining employee leave records in my investigation of your sick leave control program to insure equitable application. I am repeating request.'' He was never given the documents he requested for the EAS (nonbargaining unit) employees. Longo testified that he made this request because in early August Hargy: announced a sick leave discussion and attendance program and he made his requests ''to find out more about it.'' On cross-examination Longo testified that as a result of Hargy's program, several bargaining unit employees had discussions with their supervisors regarding their sick leave, but the contract provides that discussions do not constitute discipline and there is no right to grieve a discussion. Additionally, no employee was disciplined as a result of any of these discussions. Longo also testified that Respondent's Employees and Labor Relations Manual (the ELM) contains general leave and attendance provisions that apply to all employees, bargaining employees as well as EAS, but it does not specify the discipline for violating and of these rules.

V. CASE 34–CA–4510(P)

The request for information that was involved in this matter was sent by Vincent Corso, vice president of the Stamford Local, to Thomas Guerra, Respondent's director employment and labor relations, by request dated August 24. This request, which was in response to the termination of unit member Bryan Ewell, requested, inter alia, the following information: ''Provide copy of I.M. from postal inspectors which pertain to the following employees.'' There follows a listing of Ewell and seven supervisory employees. The Request also asks for: ''All disciplinary records of [these] employees and or reasons as to why such employees were not disciplined for their violations.'' IM is an investigative memorandum prepared by Respondent, which contains statements of witnesses and summaries of these statements, regarding a situation that they investigated. Ewell's notice of removal is dated July 7 and states that he was terminated for ''violation of USPS standards of conduct'' and ''violation of the code of ethical conduct'' with the appropriate ELM sections referred to. The notice states that on March 5 he was arrested for possession of narcotics, and on June 1 he pleaded guilty to the charge of possession of narcotics. This notice of removal states that a copy was sent to APWU; additionally, Michael Ganino, president of the Stamford Local, testified that it ''could very well be'' that the Stamford Local knew of Ewell's discharge as early as August 4. On cross-examination, Ganino was shown a request for information, dated August 4, that the Stamford Local sent to Respondent stating, inter alia, ''Pursuant to our telephone conversation . . . concerning Notice of Removal that was allegedly issued to employee Ewell.'' He testified that they were not sure, at the time, that Ewell (who never filed a grievance regarding his termination) had been terminated. Ganino testified further that he wanted these IMs to establish disparate treatment; that Respondent condoned for supervisors and managerial employees what it terminated Ewell for. Ganino also testified that if these IMs state that Ewell was involved in selling drugs during working time: ''Then that would certainly go into our thinking of whether to continue with the filing of the grievance or arbitration.''

Lloyd Roselle, Respondent's labor relations representative in Stamford, testified that he responded to this request orally to Corso; he told him that Respondent would not provide the requested information for a number of reasons. ''Number one and foremost was that it was untimely. ''Article 15 of the contract between the parties states: ''Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause''[5] Two copies of the notice of removal were mailed to Ewell (one certified and one regular mail) and one was sent regular mail to the Stamford Local on the same day;

[3] Form 3972 is a form maintained by Respondent which lists the employee's leave usage (of all types) over a period of time.

[4] Executive, salaried, and managerial employees.

[5] Received into evidence was a decision of Arbitrator Herbert Marx Jr., dated June 11, 1984, involving Respondent and APWU and the issue of timeliness of a grievance. Arbitrator Marx decided that the 14 days begin running when either the employee or the union first learns of the grievance cause.

none of these were subsequently returned to Respondent. Sometime after he received the August 4 request for information regarding Ewell's notice of removal he spoke to either Corso or Ganino, who said that they did not have a copy of it, but were familiar with it. On August 16 Roselle sent the Union the notice of removal for Ewell as requested. Roselle testified that the second reason he refused to provide the Stamford Local with the requested information was because it was not relevant to the issue. With the exception of Ewell, all the employees specified in the request for information were supervisory employees. Article 16 of the contract provides for a ''just cause'' standard for discipline of its bargaining unit employees There is a different standard for supervisors and managerial employees as contained in section 650 of the ELM, which is entitled ''Nonbargaining Disciplinary, Grievance, and Appeal Procedures,'' which sets forth the procedure for disciplining employees who are not covered by any contract. The remaining reasons for denying the August 24 request for information were that the Stamford Local was requesting written statements (the principal part of the IM) and these documents are protected from release by the Privacy Act. Roselle testified that when he received the August 24 request for information he was aware of an IM for only one of the supervisors on the list, and that involved an alleged assault by him upon another employee while under the influence of alcohol. Sometime prior to receiving this request, he became aware of an IM involving another of the supervisors listed in the request; this one involved allegations of gambling, but he didn't see this report until early 1989.

VI. CASE 34–CA–4615

This case involves two requests for information, one on January 22, 1990, and the other on February 6, 1990. The first from Corso requests the following

> Provide a complement report (Stamford) which shows total number of casuals on rolls during years 1986, 1987, 1989, and 1990 in 6-month intervals[6]
>
> For the same periods indicated above provide complement report showing numbers of PTF's on rolls in 6-month intervals.
>
> Also provide union with copies of all rules/regulations that have been relied upon by USPS in hiring of casuals and career employees (PTF's) part time flexible employees] during the period indicated above.

By letter dated January 24, 1990, Guerra enclosed ''complement figures showing number of clerk casuals and PTFs on rolls during 1989 and 1990. I believe your request for the years prior to 1989 to be unreasonable, untimely and not relevant.'' Corso testified that in about February, the Stamford Local received a letter from APWU, stating that Respondent might be in violation of article 7 of the contract by employing too many casual (nonbargaining unit) employees to the detriment of the regular employees; it was this letter that caused him to make this request. Subsequent to receiving Guerra's response, Corso spoke to him, told him that the information he supplied was inadequate and explained the relevance of his request. Article 7 of the contract provides: ''The number of casuals who may be employed in any period, other than December, shall not exceed 5% of the total number of employees covered by this Agreement.'' Corso testified that Guerra's January 24, 1990, response was not adequate because it did not include the years prior to 1989 and it was not in the form of a computer printout.[7]

By letter to the Stamford Local president, dated February 24, APWU wrote, inter alia:

> A review of the recent national ''on rolls complement'' computer printout reveals that your office has 82 casuals and 39 PTFs effective January 12, 1989. This disparity between PTFs and casuals indicates a clear violation of Article 7, Section 2B wherein casuals are being hired in lieu of career employees.
>
> We therefore request that your office immediately file a grievance alleging a violation of Article 7, Section 2B citing the number of clerk casuals and PTFs in your office on the date of the grievance. You should track the number of casuals and PTFs for the years 1986, 1987 and 1988 in 6 month intervals to show the steady increase in casuals vs. a decrease in PTFs.

Respondent's defense to this allegation is principally that it previously provided this information to APWU, as it was required to do under its contract with APWU, as proven by the APWU letter dated February 24. Article 31 of the contract provides that Respondent shall provide to APWU, on an accounting period basis (every 28 days) a computer tape containing the information set forth in the memorandum at page 202 of the contract. This memorandum provides that Respondent shall provide APWU with certain information on those in their respective bargaining units. There follows 25 items, including name, address, rate schedule, pay grade, occupation code, and pay location. James Leahy, Respondent's labor relations programs analyst principals,[8] testified that this computer tape includes all bargaining unit employees and casual employees and the location where each works. He testified that it is sent to APWU every 28 days; although he does not actually send it to APWU, he testified: ''I know they've never complained about not having received it.'' Corso was asked by counsel for Respondent:

> So, as of February 24, 1989, the National Union, your National office, was aware of the actual numbers for the casuals and other employees employed in the Stamford office or the time period that you made this information request; isn't that true?
>
> A. I suppose so.

The other information request covered by this charge is a request dated February 6, 1990, from Corso to Henry

[6] Corso testified that 1988 was inadvertently omitted and he so notified Guerra of this error within 30 days.

[7] Although not testified to by Corso, the figures supplied by Guerra on January 24 did not include regular (both full- and part-time) employees.

[8] At the hearing, counsel for General Counsel moved to strike his testimony because he testified that he had never seen the computer tape. I denied this request. I found Leahy to be a credible witness who was testifying honestly to an obvious fact—there is no reason for him to receive or see the computer tape because it is sent every 28 days to APWU. He received the printout derived from this tape.

Pankey, the Stamford postmaster. The request, which begins by stating: ''Relative to the processing of a number of ongoing grievances which relate to the unilateral blanket policy in Stamford to place employees on restricted S/L. we request the USPS provide union with the following:'' There followed six items (only five of which are relevant here):

> 1. Provide list of all employees who are currently on restricted S/L listing. (Stamford)
> 2. Provide copies of all notices issued to all employees on listing which informs them of action and reason(s) for same. (As per item #1 above.)
> 3. Provide 397s for all employees listed as per item #1 above.
> 4. Provide names of all immediate supervisors of, or overseeing each employee as per item #1 above.
> 6. Also provide union with Rules/Regulations that is currently relied upon by USPS in Stamford when placing employees on restricted S/L listing.

By letter dated February 8, 1990. Guerra informed Corso that this information would not be provided because the request was untimely as most of the employees on the list have been there for a quarter or longer, that the compilation would be overly burdensome and the request was too broad. Corso testified that he made this request because a large number of employees at the facility had been placed on restricted sick leave for the same reason—abuse—and he felt that Respondent had thereby adopted a blanket policy in this regard and was not following the proper procedures. He subsequently discussed this with a representative of Respondent during a grievance discussion of the subject. The union never received this information.

Guerra testified that at the time he received Corso's February 6, 1990 request no supervisor in his facility was on restricted sick leave, although he never informed the Union of this. He does not know if, at the time, there was an increase in the number of employees on restricted sick leave. He testified that, ''from time to time'' supervisors become lax and the amount of sick leave taken increases. The response is often an increase in sick leave restrictions. However, he knows of no conscious attempt to increase restricted sick leave. Additionally, 3972s are not maintained for supervisors at his facility, although he never so informed the Stamford Local. By letter dated July 3, 1990, Guerra informed Corso that upon review of his February 6, 1990 request, he determined that he would provide the requested information ''which presently exists for Stamford clerks.'' Guerra testified that he determined to give the union only the information regarding the clerks—the employees it represents not the carriers and mail handlers who are represented by a different union with a separate contract. These carriers and mail handlers are subject to the same time and attendance regulations as the APWU represented employees and have some common supervision with the APWU represented employees at the Stamford facility, although there are some differences in the discipline and grievance procedure under their contract.

VII. CASE 34–CA–4731

This case, as well, involves two requests for information by Local 147. The first request is dated February 12, 1990; the latter request is dated February 22, 1990. Both requests were by Joseph Morris, who is employed by Respondent at its facility at Bradley International Airport in Connecticut, and is a steward for Local 147, and were made to William Edgar, tour supervisor for Respondent at the Air Mail Facility at Bradley International Airport. The earlier request asks for all 3972s and all disciplinary actions against 12 named supervisory employees for the period September 1, 1988, through February 12, 1990. Morris testified that he delivered the request to Edgar on that day and told him that the Union felt that Respondent was guilty of disparate treatment and discipline toward APWU members as compared to supervisors and managerial employees. The issue involved time and attendance and Morris told Edgar that he felt that the information requested was relevant. Edgar responded that managerial and supervisory employees were not subject to article 16 of the contract. Morris answered that while that was true, they were subject to the attendance provisions of the ELM. On February 19 Edgar returned the request to Morris and informed him that Respondent's labor relations department said that they have not turned over this information in the past and they wouldn't do it now. Edgar stated at the bottom of the request, under ''Request Denied'': ''I do not have access to requested material. Recommend that you request information from the installation head, Postmaster Payne.''

Morris testified that he made this request in response to a notice of removal, dated January 30, 1990, issued to bargaining unit employee Arlene Vanasse. Although at the time of the hearing no action had yet been taken on this notice of removal, it states: ''You are hereby notified that you will be removed from the Postal Service no sooner than 30 days from your receipt of this notice. The reasons for this action are:'' and the notice sets forth 10 incidents between October 21 and January 27, 1990, where Vanasse was either late or absent from work, and 5 times between May and August 1987 where Vanasse vas either suspended or issued a letter of warning. Subsequent to this notice of removal, at a Local 147 meeting, the members and stewards were requested to provide the names of supervisors ''that they felt may border on being abusers of time and attendance issues,'' based on the fact that there were days when the supervisors were absent from work.

Paul Cotti, Respondent's operations manager at Bradley International Airport, testified that of the 12 supervisors listed on this request, only 6 were employed at his facility. The others were at the General Mail Facility in Hartford, which is subject to separate supervision. Of the six supervisors at his facility only one was AWOL during this period, on two occasions, and both involved tardiness. For the first situation he was given a discussion; the second resulted in no action being taken against the supervisor.

By request for information dated February 22, 1990, from Morris to Edgar, the Union requested: ''All 3972s and disciplinary actions against or issued to the below named mgt. employees.'' There followed the names of seven supervisory employees employed at Bradley. Morris testified that he delivered this request to Edgar on that day and told him that it was the result of an appeal made at a union meeting for the names of additional supervisors that had prolonged absences. Edgar told him: ''It's going to go the same route that the others went.'' On February 25 Edgar returned the request to him telling him that they weren't entitled to this informa-

tion. Respondent never provided the Union with this information.

VIII. ANALYSIS

These cases all involve the refusal of Respondent to provide the Stamford Local and Locals 147 and 646 with certain requested information, allegedly in violation of Section 8(a)(1) and (5) of the Act. Behind this ''basic'' issue lie a number of different ''subplots,'' requests for information regarding supervisors and employees in a different bargaining unit, time-barred grievances, and privacy requirements to name a few. Before discussing each of these cases and the specific issue or issues they present, it is first necessary to set forth the general rule regarding an employer's obligation to provide requested information to the collective-bargaining representative of its employees.

In *Sheraton Hartford Hotel*, 289 NLRB 463 (1988), the Board set forth the rule to be applied in cases involving refusal to furnish information. In doing so, the Board cited *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), *Pfizer, Inc.*, 268 NLRB 916 (1984), and *Southern Nevada Builders Assn.*, 274 NLRB 350 (1985):

> Section 8(a)(5) obligates an employer to provide a union requested information if there is a probability that the information would be relevant to the union in fulfilling its statutory duties as bargaining representative. Where the requested information concerns wage rates, job descriptions, and other information pertaining to employees within the bargaining unit, the information is presumptively relevant. Where the information does not concern matters pertaining to the bargaining unit, the union must show that the information is relevant. When the requested information does not pertain to matters related to the bargaining unit, to satisfy the burden of showing relevance, the union must offer more than mere suspicion for it to be entitled to the information.

Case 34–CA–4423(P) involves Respondent's refusal to furnish Local 646 with the Form 3972s for all its supervisors at the New London facility. Longo made this request in response to Hargy's newly instituted sick leave and attendance discussion program.[9] His purpose was to compare the leave records of bargaining unit employees with the leave records of supervisors ''to insure equitable application.'' Article 16 of the contract provides that no employee shall be disciplined or discharged ''except for just cause,'' and then gives some examples of such offenses. The contract then provides that any such discipline or discharge shall be subject to the grievance-arbitration provisions of the contract. Section 665 of Respondent's ELM specifies numerous statutes and regulations that apply ''to all employees'' of Respondent. Section 666, entitled ''USPS Standards of Conduct'' refers to employees' (including supervisors) obligations in such areas as attendance, tardiness, and discharge of duties. Section 650 of the ELM is entitled: ''Nonbargaining Disciplinary, Grievance and Appeal Procedures.'' The initial paragraph states that it establishes the procedure for disciplinary action against nonprobationary employees who are not covered by a collective-bargaining agreement. This section provides for letters of warning, suspensions, and other adverse action (discharges or suspensions); letters of warning, suspensions, and discharge are said to be warranted when lesser corrective measures have failed to correct the situation.

Postal Service, 289 NLRB 942 (1988), is instructive in the instant matter. In that case, as a result of an investigation into gambling activity at a facility, the postal service disciplined and discharged a number of bargaining unit employees for engaging in gambling activities. The union requested the postal service to provide it with information regarding the discipline of supervisors arising out of that investigation into gambling activity. The postal service refused and the Board found an 8(a)(1) and (5) violation. The Board found that the prohibition against gambling applied equally to bargaining unit employees and supervisors, and both groups violated the prohibition; therefore, ''evidence relating to the discipline given supervisors is information that has some bearing on the determination of whether the unit employees have been treated harshly, unjustly, or disparately.'' There is a significant difference, however, between this case and the instant matter. In the above-cited case, both the bargaining unit employees and the supervisors were involved in the gambling activity that was the subject of the investigation. Bargaining unit employees were disciplined as a result of this investigation; the union wanted to know if any supervisors were also disciplined as a result of the investigation. These facts are clearly distinguishable from the instant matter where there is no such nexus between the leave records of bargaining unit employees and the supervisors. I find that Local 646's request was based on mere suspicion and that counsel for General Counsel has not sustained his burden of demonstrating a probability that the requested information is relevant. I therefore recommend that the complaint in this case be dismissed.

In Case 39–CA–4510(P) it is alleged that Respondent violated the Act by refusing to provide the Stamford Local with copies of IMs and disciplinary records of Ewell and seven supervisory employees. Initially, I reject Respondent's principal defense to this refusal that the union's request was untimely, although I agree that under Arbitrator Marx's decision the request probably was untimely. However, that is for an arbitrator, not me, to decide. As the Board stated in *Safeway Stores*, 236 NLRB 1126 fn 1 (1978):

> [B]efore a union is put to the effort of arbitrating even the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievances have merit and whether they should be pursued at all.

However, I recommend that this allegation be dismissed for the same reason as above: General Counsel has not sustained his burden of showing that the Stamford Local's request was based on more than mere suspicion. *Sheraton Hartford Hotel*, supra. Ewell was terminated after pleading guilty to possession of narcotics; there is no apparent nexus between his termination and Corso's request for the supervisors' IMs and disciplinary records. Unlike the request made in *Postal*

[9] Because I decide this matter on other issues, I will not discuss the fact that, under the contract, discussions do not constitute discipline, that the Union has no right to grieve a discussion, or the fact that no employee was disciplined as a result of these discussions.

Service, supra, this request appears to be in the nature of a fishing no expedition. I therefor recommend dismissal.[10]

The first allegation in Case 39–CA–4615(P) is that Respondent violated the Act by failing to provide the union with the complement reports showing the number of casual employees and PTFs during the period 1986 to the present. Respondent's immediate response was to provide the union with the number of casual employees and PTFs employed during 1989 and 1990; that the request for prior years was ''unreasonable, untimely and not relevant.'' These defenses are clearly not valid here; no evidence was adduced (and I find none) that the request was unreasonable. As discussed above I find that untimely defenses are not valid in refusal to provide information cases before the Board, and there can be no question that this information is relevant to the union in determining whether Respondent has violated article 7 of the contract. At the hearing, Respondent's principal defense to this allegation was that it is required by the contract to give this information to APWU every 28 days and it did so, as proven by APWU's letter to the Stamford Local dated February 24. Article 31 of the contract provides that Respondent shall provide APWU with a computer tape containing the information set forth in the memorandum on page 202 of the contract: this memorandum lists 25 categories of information that Respondent must provide APWU every 28 days for ''those in their respective bargaining units.'' Not only was no evidence adduced that Respondent failed to provide APWU with this information, but APWU's letter of February 24 to the Stamford Local clearly establishes that APWU received such information. As stated above, APWU is the nominal collective-bargaining representative of these employees and the party to the contract with Respondent. There is no requirement that Respondent *additionally* give this information to the Stamford Local. I therefore recommend that this allegation be dismissed.

The remaining allegation in this case involves Corso's request, dated February 6, 1990, to Pankey. This request asks for a list of ''all employees'' currently on restricted sick leave, copies of all notices to these employees informing them of the action and the reason for it, the Form 3972 for all these employees, the supervisors of these employees, and the rules relied on in placing employees on restricted sick leave at the facility. Corso made this request because a large number of employees at the facility had been placed on restricted sick leave for the same reason—abuse—and he felt that Respondent was not following the proper procedure and had adopted a blanket policy in this regard. It is not entirely clear whether Corso's Request included supervisors. The request was for ''all employees'' and Guerra testified that he understood that to mean ''Every employee on the restricted sick leave list.'' The Stamford Local never narrowed it down for him. Corso's testimony is not helpful in this regard. Counsel for Respondent's and counsel for General Counsel's briefs assume that this request was meant to include supervisors. In this regard, Guerra testified credibly that Respondent does not maintain 3972s for supervisors at the facility and, at the time of this request, no supervisor was on restricted sick leave. Additionally, I find that General Counsel has not sustained his burden of establishing the relevancy of this information as it applies to supervisors. Although the record is also not very clear whether the request includes employees in other units, I find that it did. The record establishes that there is some common supervision with the mail handling employees (who are represented by another union) and that these employees are subject to the same time-and-attendance regulations as the clerks. I therefor find that General Counsel has sustained his burden in establishing the relevance of this information as regards the mail handlers and that Respondent's refusal to turn over that information when requested violates the Act. There can be no question as to the relevance of the information on the clerks in the unit. As Respondent did not agree to provide this information until July 3, 1990, 6 days before the resumption of this hearing, for no apparent valid reason, I find that this refusal also violated the Act.

I recommend that the allegations contained in Case 34–CA–4731(P) be dismissed for two reasons: there is no nexus between the discipline of Vanasse and possible discipline of supervisors as was true in *Postal Service*, supra. In addition, the names of supervisors listed in these requests was obtained by Local 147 by asking its members at a meeting which supervisors had prolonged absences from work. It is possible that these ''absences'' were actually vacation time, transfers or some other valid reason for being absent from the facility, something that the members would ordinarily not be aware of. This, therefore, appears to me to be ''mere suspicion'' referred to by the Board in *Sheraton Hartford*, supra. I therefore recommend that this complaint be dismissed as well.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent pursuant to Section 1209 of the PRA.

2. APWU, the Stamford Local, and Locals 646 and 147 are labor organizations within the meaning of Section 2(5) of the Act.

3. APWU (and, through it, the Stamford Local and Locals 646 and 147) is the exclusive collective-bargaining representative of the following employees of Respondent, which is more fully described in the collective-bargaining agreement between the parties effective July 21, 1987, through November 20, 1990: maintenance employees, special delivery messengers, motor vehicle employees, postal clerks.

4. Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Stamford Local with certain information they requested on August 24, 1989, and February 6, 1990, the information being relevant and necessary to the Union as the collective-bargaining representative of the employees in the above-mentioned unit.

5. Respondent did not violate the Act as further alleged in the consolidated complaint.

[10] With one exception, the August 24 request also asked for Ewell's disciplinary records and IMs and, like those of the seven named supervisors, they were not given to the union. Ewell was, of course, in the Stamford Local's unit and the information is therefor presumptively relevant. No evidence was produced otherwise, and I so find. If Respondent has any IMs or disciplinary records relating to Ewell, it is recommended that they be ordered to turn them over to the Stamford Local.

REMEDY

It having been found that Respondent has violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Stamford Local with information it requested on August 24, 1989, and February 6, 1990, it will he recommended that Respondent cease and desist therefrom and to promptly, supply the information (as set forth above and below) to the Stamford Local.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, United States Postal Service, New London, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Stamford Local with information it requested by letters dated August 24, 1989, and February 6, 1990, as described below, the information being relevant and necessary to the Stamford Local as the collective-bargaining representative of certain of Respondent's employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish the Union with the following information.

(1) Respondent's investigative memoranda (IM) and any disciplinary records pertaining to Bryan Ewell.

(2) List of all employees on restricted sick leave as of February 6, 1990, at its Stamford, Connecticut facility.

(3) Copies of all notices issued to these employees informing them of actions and the reasons for such actions.

(4) The names of the supervisors of above employees.

(5) Form 3972 for each of these employees.

(b) Post at its facilities in Stamford, Connecticut, copies of the attached notice marked ''Appendix.''[12] Copies of the notice, on forms 20 provided by the Regional Director for Region 39, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other, material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the remaining allegations contained in the consolidated complaint are hereby dismissed.

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to furnish Stamford, Connecticut Area Local, American Postal Workers Union, AFL–CIO (Stamford Local) with information that it requested which is relevant and necessary to its status as exclusive collective-bargaining representative of certain of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL promptly furnish the Stamford Local with all investigation memoranda and disciplinary records that we have for former employee Bryan Ewell.

WE WILL promptly furnish the Stamford Local with a listing of all employees at the Stamford facility who were on restricted sick leave as of February 6, 1990, copies of the notices issued to these employees informing them of the action, Form 3972s for each of these employees and the name of the supervisor for each of these employees.

UNITED STATES POSTAL SERVICE